Amathevelli a/p P Ramasamy v Public Prosecutor

FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05–60 OF 2008(N)
ARIFIN ZAKARIA CJ (MALAYA), AUGUSTINE PAUL AND ZULKEFLI FCJJ
19 JANUARY 2009

Administrative Law — Exercise of judicial functions — Rules of natural justice — Delay of five years in supplying written grounds of judgment — Whether manifest miscarriage of justice — Whether caused prejudice to accused — Whether delay per se rendered decision vitiated or liable to be set aside

Criminal Law — Murder — Appeal — Conviction and sentence — Circumstantial evidence — Whether appellant correctly convicted and sentenced — Penal Code s 302

Evidence — Information leading to fact discovered — Whether accused gave information to police — Whether information supplied admissible — Whether prejudicial effect outweighed evidential value — Whether inadmissibility of information supplied affected admissibility of evidence of appellant's subsequent conduct — Evidence Act 1950 ss 8, 9, 27 & 114(a)

The appellant was charged for the offence of murder under s 302 of the Penal Code. She was found guilty of the offence as charged and was convicted and sentenced to death. Her appeal to the Court of Appeal was dismissed and hence this appeal. SP7, the husband of the deceased, testified that upon entering their sundry shop he found the deceased sprawled on the floor covered in blood. He also found the deceased's chain missing which he had seen her wearing before he left for the market that very morning. SP13, the investigating officer of the case, found a slash wound on the deceased's neck. A post mortem conducted by SP9, a forensic pathologist, disclosed that she had numerous injuries including scalding on the head, face, chest and hands. He also stated that the deceased had some defensive wounds. The scalding, according to SP9, was due to the deceased coming into contact with acid. When the appellant was arrested, some scalding marks were detected on her. She was later examined by SP14 who stated that the scalding marks found on the appellant were caused by the appellant coming into contact with acid. While the appellant was in police custody she gave information to the police that led to the recovery of the gold chain (P40) and lockets (P44A–F) that

were found in a cupboard of her house. The cupboard was locked and was opened by the appellant using a key found on a chain worn by her around her neck. P40 was identified by SP7 to be the gold chain belonging to the deceased. At the close of the prosecution's case the learned trialjudge found that the prosecution had made out a prima facie case and called upon the appellant to enter her defence. In her defence, the appellant denied killing the deceased. The appellant stated that on the date of the incident, she had entered the shop at about 9am and as she approached the cashier's counter, she saw a male Malay strangling the deceased using a rope. She immediately ran out of the shop but was stopped at the entrance by another Malay male by holding both her shoulders and punching her on her lips. The man also splashed acid on the left side of her face and arm. That explained the injury on her lips and arm. She also claimed that she had never told the police that P40 and P44A–F were in her possession. The appellant raised two main grounds in support of the appeal. The first was related to the delay of the learned trial judge in supplying the written grounds of judgment and the second related to the admissibility of statement while in police custody; the statement leading to the recovery of P40 and P44A–F.

Held, dismissing the appeal:

(1) None of the authorities supported the proposition that delay per se in supplying the written grounds of judgment was sufficient to render the decision of the trial judge to be vitiated or liable to be set aside. The learned judge may in appropriate cases be castigated but that was not a sufficient reason to quash the conviction. It was therefore, necessary for the appellant in the present case to go one step further and demonstrate through the notes of evidence the manner in which the appellant had been prejudiced by the delay to warrant a vitiation of the whole proceedings. However, the appellant had failed to do so (see paras 16, 21–22).

(2) The words 'memberi pengakuan kepada saya' appearing in the question may literally be translated to mean 'confess to me'. The answer given by the appellant read together with the question can be construed as an admission by the appellant to the offence for which she was being charged. On that premise the question ought not in the circumstances to have been admitted as evidence as its prejudicial effect far outweigh its evidential value. Be that as it may, the information in itself was a complete statement without having to resort to the question. Therefore, the information supplied under s 27 by the appellant was inadmissible (see paras 28 & 30).

(3) The inadmissibility of the information supplied by the appellant does not affect the admissibility of the evidence of her subsequent conduct

under s 8 of the Evidence Act 1950 irrespective of s 27. The evidence of conduct of the appellant in this case are as follows: (a) bringing the police team to her house; (b) using the key attached to the chain that she was wearing to open the cupboard; (c) taking out a folded green blouse from the cupboard; and (d) taking out from the blouse a folded handkerchief containing P40 and P44A–F which belonged to the deceased (see paras 31–32).

(4) The defence put up by the appellant when tested against the totality of the evidence adduced was difficult to be believed. More importantly it failed to raise any reasonable doubt in the prosecution's case. The appellant in her evidence did not offer any explanation whatsoever as to how she came to be in possession of the deceased's jewellery. Therefore, the trial court and the Court of Appeal had rightly concluded that the circumstantial evidence before the court irresistibly points to the guilt of the appellant (see para 36).

[Bahasa Malaysia summary

Perayu dituduh atas kesalahan membunuh di bawah s 302 Kanun Keseksaan, Dia didapati bersalah atas kesalahan yang dituduh dan disabitkan dan dihukum mati. Rayuannya ke Mahkamah Rayuan telah ditolak dan maka rayuan ini. SP7, suami si mati, memberi keterangan bahawa semasa memasuki kedainya dia mendapati si mati terbaring di atas lantai dengan kesan darah. Dia juga mendapati rantai si mati hilang yang mana dia melihat si mati memakainya sebelum keluar ke pasar pada pagi itu. SP13, pegawai penyiasat kes tersebut, menemui kesan tetakan pada leher si mati. Bedah siasat dilakukan oleh SP9, ahli patologi forensik, mendedahkan bahawa si mati mendapat beberapa kecederaan termasuk lecur pada kepala, muka, dada dan tangannya. Beliau juga menyatakan bahawa si mati mempunyai luka mempertahankan diri. Luka lecur tersebut, menurut SP9, adalah disebabkan oleh si mati terkena asid. Apabila perayu ditangkap, beberapa kesan lecur ditemui padanya. Dia kemudian diperiksa oleh SP14 yang menyatakan bahawa kesan lecur yang didapati pada perayu disebabkan oleh perayu terkena asid. Semasa perayu berada di dalam tahanan polis dia memberi maklumat kepada polis yang membawa kepada penemuan rantai emas (P40) dan loket (P44A-F) yang ditemui di dalam almari rumahnya. Almari tersebut dikunci dan telah dibuka oleh perayu menggunakan kunci yang didapati pada rantai yang dipakai olehnya di lehernya. P40 dikenal pasti oleh SP7 sebagai rantai emas kepunyaan si mati. Di akhir kes pihak pendakwaan, hakim perbicaraan mendapati bahawa pihak pendakwaan telah membuktikan kes prima facie dan menyuruh perayu memasukkan pembelaannya. Di dalam pembelaannya, perayu menafikan membunuh si mati. Perayu menyatakan bahawa pada tarikh kejadian, dia telah memasuki kedai tersebut pada pukul 9 pagi dan semasa menghampiri kaunter bayaran,

dia melihat seorang lelaki Melayu menjerut si mati dengan seutas tali. Dia segera lari keluar dari kedai tersebut tetapi telah ditahan di pintu masuk oleh seorang lagi lelaki Melayu dengan memegang kedua-dua belah bahunya dan menumbuknya di bahagian bibir. Lelaki tersebut juga mencurah asid pada bahagian kiri muka dan tangannya. Itu menjelaskan kecederaan pada bibir dan tangannya. Dia juga mendakwa bahawa dia tidak pernah memberitahu polis bahawa P40 dan P44A-F ada di dalam milikannya. Perayu membangkitkan dua alasan untuk menyokong rayuan ini. Pertama dikaitkan dengan kelewatan hakim perbicaraan memberikan alasan penghakiman bertulis dan yang kedua berkait dengan kebolehterimaan kenyataan semasa dalam tahanan polis; kenyataan yang membawa kepada penemuan P40 dan P44A-F.

Diputuskan, menolak rayuan:

(1) Tiada satu pun autoriti menyokong kenyataan bahawa kelewatan memberikan alasan penghakiman bertulis semata-mata adalah mencukupi untuk menyebabkan keputusan hakim perbicaraan tidak sah atau boleh diketepikan. Hakim yang bijaksana boleh dalam kes-kes yang sewajarnya dikecam tetapi ia bukan alasan yang mencukupi untuk membatalkan sabitan. Oleh yang demikian, ia adalah perlu untuk perayu di dalam kes ini mengambil satu lagi langkah seterusnya dan menunjukkan melalui nota keterangan bagaimana perayu telah terjejas oleh kelewatan untuk mewajarkan pembatalan keseluruhan prosiding. Walau bagaimanapun, perayu gagal berbuat demikian (lihat perenggan 16, 21–22).

(2) Perkataan-perkataan 'memberi pengakuan kepada saya' yang terdapat di dalam soalan boleh secara literal ditafsirkan untuk membawa maksud 'confess to me'. Jawapan yang diberi oleh perayu dibaca bersama dengan soalan tersebut boleh ditafsirkan sebagai pengakuan oleh perayu terhadap kesalahan yang dituduh terhadapnya. Atas dasar itu, soalan tersebut tidak patut dalam keadaan tersebut boleh diterima sebagai keterangan kerana kesan menjejaskannya melebihi nilai keterangannya. Walaupun demikian, maklumat tersebut dengan sendirinya adalah kenyataan lengkap tanpa perlu melihat soalan tersebut. Oleh itu, maklumat yang diberikan di bawah s 27 Akta Keterangan 1950 ('Akta') oleh perayu tidak boleh diterima (lihat perenggan 28 & 30).

(3) Kesan tak boleh terima maklumat yang diberikan oleh perayu tidak memberi kesan kepada kebolehterimaan keterangan mengenai tindakannya yang kemudian di bawah s 8 Akta tanpa mengira s 27. Keterangan tindakan perayu di dalam kes ini adalah seperti berikut: (a) membawa pasukan polis ke rumahnya; (b) menggunakan kunci yang disangkut pada rantai yang dipakainya untuk membuka almari; (c)

membawa keluar sehelai baju berwarna hijau yang dilipat daripada almari; dan (d) mengeluarkan daripada baju tersebut sehelai sapu tangan berlipat yang mengandungi P40 dan P44A-F kepunyaan si mati (lihat perenggan 31–32).

(4) Pembelaan yang dikemukakan oleh defendan apabila diuji terhadap keseluruhan keterangan yang dikemukakan adalah sukar untuk dipercayai. Lebih penting lagi ia gagal untuk membangkitkan keraguan yang munasabah terhadap kes pihak pendakwaan. Perayu di dalam keterangannya tidak menawarkan sebarang penjelasan mengenai mengapa dia mempunyai milikan barang kemas si mati. Oleh itu, mahkamah perbicaraan dan Mahkamah Rayuan telah secara betul memutuskan bahawa keterangan ikut keadaan di hadapan mahkamah secara tidak boleh disangkal mengarahkan kepada kebersalahan perayu (lihat perenggan 36).]

Notes

For a case on appeal against murder, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) para 1154.

For cases on information leading to fact discovered, see 7(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1794–1835.

For cases on rules of natural justice, see 1 *Mallal's Digest* (4th Ed, 2007 Reissue) paras 140–141.

Cases referred to

Abdullah bin Saad v PP [1956] MLJ 92, CA (refd)
Parlan bin Dadeh v PP [2008] MLJ 19, FC (refd)
PP v Hashim bin Hanafi [2002] 4 MLJ 176, HC (refd)
PP v Khoo Boo Hock & Anor [1990] 1 CLJ 971 (refd)
PP v Ramanathan a/l Chelliah Criminal Appeal No W-09–4 of 2005 (refd)
Prakash Chand v State AIR 1979 SC 400 (refd)
Tan Hun Wah v PP and another appeal [1994] 1 MLJ 382, SC (refd)
Voon Chin Fatt v PP [1948–1949] MLJ Supp 131 (refd)

Legislation referred to

Evidence Act 1950 ss 8, 9, 27, 114(a)
Penal Code s 302

Appeal from: Criminal Appeal No N-05–30 of 2003 (Court of Appeal, Putrajaya)

Karpal Singh (Ramkarpal Singh with him) (Karpal Singh & Co) for the appellant.

Mangairkarasi a/p Krishnan (Nurulhuda Nur'aini bt Mohd Noor with her) (Deputy Public Prosecutors, Attorney General's Chambers) for the respondent.

Arifin Zakaria CJ (Malaya) (delivering judgment of the court):

BACKGROUND

[1] The appellant was charged in the High Court at Seremban for the offence of murder under s 302 of the Penal Code. The charge reads as follows:

> Bahawa kamu pada 17.5.1998, di antara jam 6.50 pagi hingga jam 10.00 pagi, dikedai runcit No 156, Lorong 4, Kampong Gatco, Air Hitam, di dalam Daerah Jempol, di dalam Negeri, Negeri Sembilan telah melakukan pembunuhan dengan menyebabkan kematian SOOSAIMMAH A/P AROKIASAMY, K/P: 660301-05-5456 dan dengan itu melakukan satu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

[2] On 8 November 2001 she was found guilty of the offence as charged and was convicted and sentenced to death. Her appeal to the Court of Appeal was dismissed on 16 February 2008 and she now appeals to this court.

BRIEF FACTS

[3] On the fateful day Gabrial a/l S Raju (SP7), the husband of the deceased, had left his house for the market at around 7am. He returned home at about 10am and found his child crying. He was told that the deceased had left the house since morning and had not returned. He then brought the child to their sundry shop located about 50m from his house. He found that the shop was unlocked. Upon entering the shop he found the deceased sprawled on the floor covered in blood. He then called the police. In the mean time he conducted a check in the shop and found that a sum of RM500–RM600 he had kept in the drawer of the cashier's counter missing. He also found the deceased's chain missing which he had seen her wearing before he left for the market that very morning.

[4] The investigating officer of the case, Chief Inspector Yong Soun Lian (SP13), arrived at the scene at about 11.20am. He said that he found the deceased's body lying on the floor near the cashier's counter. It was covered with blood and smelt of formic acid. He recovered an empty formic acid bottle from the vegetable rack and a blood stained knife. He also recovered a broken stool. SP13 also found an identity card belonging to one Shamsuri bin Hashim (SP6) on the cashier's counter. SP6 was subsequently arrested and later released as the investigation revealed that he was not involved in the

commission of the crime. Upon examination of the body of the deceased, SP13 found a slash wound on her neck.

[5] The post mortem conducted by Dr Zahari bin Noor (SP9), a forensic pathologist, on the deceased disclosed that she had numerous injuries including scalding on the head, face, chest and hands. The cause of death according to SP9 was a slash wound at the right side of the neck which severed off the sterna mastoid muscle and carotid artery vein, causing massive bleeding. SP9 also testified that the knife (P19B) recovered from the scene could have caused the injury. He also stated that the deceased had some defensive wounds. The scalding, according to SP9, was due to the deceased coming into contact with acid.

[6] The appellant was arrested on 18 May 1998. Scalding marks were detected on the appellant and she was later examined by Dr Sandra Krishnan (SP14) on the same day and SP14 was of the opinion that the scalding marks found on the appellant were caused by the appellant coming into contact with acid and the injuries were one or two days old.

[7] The appellant's husband Durairaj a/l Kolandaveloo (SP10) gave evidence for the prosecution. He stated that at the material time he was living with the appellant and their children at house No 130, Jalan 5, Kg Gatco. They both worked as rubber tappers. On the day in question he said he left the house to tap rubber at about 5.30am. The appellant did not go with him. She came later at between 6.30am and 7.30am on a Yamaha motorcycle bearing registration No ND 2480. She left the rubber plantation at about 9.30am saying that she was not well.

[8] While she was in police custody she gave information to the police which led to the recovery of the gold chain (P40) and lockets (P44A–F) in a cupboard of her house. The cupboard was locked and was opened by the appellant using a key found on a chain worn by her around her neck. P40 was identified by SP7 to be the gold chain belonging to the deceased. Learned counsel for the appellant took issue on the admissibility of the information which led to the recovery of P40. I shall deal with this issue in a later part of the judgment.

[9] At the close of the prosecution's case the learned trial judge found that the prosecution had made out a prima facie case and called upon the appellant to enter her defence.

[10] She elected to give evidence on oath. She said that she had no quarrel with the deceased. On the morning in question she went to the deceased's shop at about 9am. She entered the shop and as she approached the cashier's

counter, she saw a male Malay strangling the deceased using a rope. She immediately ran out of the shop but was stopped at the entrance by another Malay male by holding both her shoulders and punching her on her lips. The man also splashed acid on the left side of her face and arm. That explains the injury on her lips and arm.

[11] She managed to free herself from the man and after that she went straight to work. She went home with her husband at about 8.30–9am. She claimed that she had told her husband about the incident at the shop.

[12] She denied killing the deceased. She also claimed that she never told the police that the gold chain and lockets (P40 and P44A–F) were in her possession.

THE ISSUES

[13] Before us learned counsel for the appellant raised two main grounds in support of the appeal. The first relates to the delay of the learned trial judge in supplying the written grounds of judgment and the second relates to the admissibility of P51; the statement leading to the recovery of P40 and P44A–F.

Delay in supplying the grounds of judgment by the trial judge

[14] This ground of appeal is contained in grounds 1, 2 and 3 of the petition of appeal which read:

(1) The learned judges of the Court of Appeal misdirected themselves in not concluding that the inordinate and unexplained delay of five years in supplying the grounds of judgment after notice of appeal had been filed had occasioned a manifest miscarriage of justice in that there would have been prejudice caused to the accused on the basis that there was every likelihood not only that the trial judge's impression of demeanour of witnesses would be blurred but also the delay would have increased the chances of omission on the part of the learned trial judge to deal with material facts and issues in the grounds of judgment which would have been favourable to the appellant.

(2) In ruling that the delay referred to in ground I herein had not caused prejudice to the appellant, the learned judges of the Court of Appeal were, with respect, only encouraging delay in delivery of judgment by trial judges which was, in effect, a disservice to the administration of justice in the country, particularly so, when there was obvious defiance by the learned trial judges of the circular of the Chief Justice

requiring judges to supply their grounds of judgment within eight weeks from the date on which notice of appeal was filed, contravention of which could expose a judge to face a tribunal for misconduct.

(3) The learned judges of the Court of Appeal should have been proactive in holding that the inordinate and unexplained delay had, under the circumstances obtaining in the appellant's case, caused her serious prejudice.

[15] On this issue we agree with learned counsel for the appellant that there was indeed an inordinate delay on the part of the learned trial judge in furnishing his grounds of judgment as it took him five years to do so. Learned counsel submitted before us that in this case the learned judge was in fact pressured into writing his judgment as the matter was raised in the press. Therefore on these grounds, as raised in the petition, he submitted, this is a fit and proper case for this court to order a retrial.

[16] The Court of Appeal in the judgment written by Raus Sharif JCA took the view that delay per se in supplying the written judgment by the trial judge does not automatically render the decision of the trial judge to be vitiated or liable to be set aside. The court relied on the view expressed by the then Supreme Court in *Tan Hun Wah v Public Prosecutor and another appeal* [1994] 1 MLJ 382 and said:

> In the present case, it took the learned trial judge about five years to supply the grounds of judgment to the accused. It is regrettable, but we are of the same view with the Supreme Court that it should not necessarily result in vitiating the whole proceedings. This is more so when it is not shown to us through the notes of evidence that the appellant has suffered prejudice as the result of the delay in supplying the grounds of judgment to the accused. Further, we hold the view that in the administration of justice, the courts must be fair not only to the accused person, but must also be fair to the State and society. It would not be fair to the State and society whose penal law are made and administered, if the accused is given an outright acquittal just because of the delay in supplying the grounds of judgment. This is especially so when the accused has been found guilty of a serious crime of murder. We, therefore hold that this appeal must be heard on its merits.

[17] A pertinent observation made by Mohamad Azmi SCJ in *Tan Hun Wah* is this:

> The principle that 'Justice delayed is justice denied' is of general application, and it does not follow that every form of delay, though frowned upon by the courts, should result in vitiating the whole proceedings.

[18] Delay could occur in two ways; delay in making decisions and delay in delivery of written grounds of judgment. These are two separate things. In some cases the decisions are made earlier and the written grounds are supplied at a later date, while in others both are delivered at one and the same time, especially where judgment is reserved. Ideally when a decision is reserved the court should deliver its decision coupled with a written grounds of judgment. This would expedite the disposal of any appeal that may follow. In the present case the trial commenced on 25 January 2000 and was concluded on 25 November 2000 after several adjournments: at the end of which the trial judge adjourned it for parties to file written submissions. It was not until 8 November 2002 that the trial judge delivered his decision.

[19] Having adjourned the matter for close to two years no written grounds of decision was made available. The trial judge merely delivered an oral decision. The written grounds of decision or judgment was not forthcoming until 5 December 2007; a period of five years. This is clearly a case of serious dereliction of duty on the part of the trial judge which cannot be condoned. In *Public Prosecutor v Ramanathan a/l Chelliah* Criminal Appeal No W-09–4 of 2005, Zainun Ali JCA aptly remarked:

> Make no mistake that we are unanimous is our view that delay in preparing and supplying grounds of judgment in itself is a malaise that must be resisted as far as possible. It is an aberration much to be abhorred.

[20] We would not say more on this, save that actions have been taken by the current Chief Justice to address this issue of delay in delivering written judgments, as had happened in this case.

[21] In this case we have examined the authorities cited to us by learned counsel for the appellant but we find none that goes to support the proposition that delay per se in supplying the written grounds of judgment is sufficient to render the decision of the trial judge to be vitiated or liable to be set aside. The learned judge may in appropriate cases be castigated but that is not a sufficient reason to quash the conviction. Take the case of *Voon Chin Fatt v Public Prosecutor* [1948–1949] MLJ Supp 131, where there was a delay of two years in delivering the grounds of judgment. Spenser Wilkinson J allowed the appeal by the accused/appellant for two reasons, namely, the delay in delivering the grounds of judgment which he said could have prejudiced the appellant's case and, secondly, because of the confusion between admissible and inadmissible evidence and of the fact that the admissible evidence was not as unassailable as the trial judge appeared to have thought. So on these two grounds the learned judge found that the conviction could not stand. Hence delay in supplying grounds of judgment was not the single reason that prompted the learned judge to come to the

decision that he did. Similarly in *Tan Hun Wah v Public Prosecutor and another appeal*, it was held that delay alone is not a sufficient ground to cause the proceedings to be vitiated, there must be more to it. In that case the failure of the prosecution to call one Alenalli Singh or offer him as a witness was held to be a fatal omission which together with the long delay in the court proceedings was sufficient to have prejudiced the appellant.

[22] Therefore, it is necessary for the appellant in the present case to go one step further and demonstrate to us through the notes of evidence the manner in which the appellant had been prejudiced by the delay to warrant a vitiation of the whole proceedings. This, learned counsel for the appellant failed to do. On that premise we are of the view that the Court of Appeal had correctly dismissed this ground in the appeal by the appellant.

Section 27 of the Evidence Act 1950

[23] The second ground of appeal relates to the recovery of P40, the deceased's gold chain from the appellant's house pursuant to the information given by the appellant to SP12 which was recorded by him in P51. The information, after expunging the offending words, reads as follows:

> Encik, rantai leher emas yang saya ambil daripada perempuan … itu ada saya simpan di rumah saya di No 130, Jalan 5, NUPW Gatco, Air Hitam. Saya boleh bawa encik dan tunjukkan di mana saya simpan rantai leher emas tersebut.

[24] Mr Karpal Singh, learned counsel for the appellant, contended that it is not disputed that in P51, SP12 did not record the questions which led to the information being given by the appellant and that even in his oral testimony SP12 did not advert to any questions which were asked by him which led to the information being given which was as recorded in P51. Relying on *Public Prosecutor v Khoo Boo Hock & Anor* [1990] 1 CLJ 971 and *Public Prosecutor v Hashim bin Hanafi* [2002] 4 MLJ 176, it was submitted that the information given by the appellant should have been ruled inadmissible, with the result that the recovery of P40 and P44A–F could not be linked to the appellant. Without the evidence of P51 the other circumstantial evidence are, in his submission, insufficient to constitute proof of the case against the appellant beyond a reasonable doubt.

[25] However, as submitted by the learned DPP, looking at P51 one will find the question put to the appellant by SP12. The question reads:

> Apakah yang kamu ingin memberi pengakuan kepada saya?

[26] Further we agree with the learned DPP that s 27 does not require the question to be recorded before the information may be admitted under the said section. It is true that in *Public Prosecutor v Hashim bin Hanafi*, Augustine Paul J (as he then was) did make the observation that evidence of the question asked is imperative on the facts of a particular case in order to have a proper appreciation of the answer. He said that in certain circumstances the question asked has to be read with the answer given by the accused as otherwise the answer would not make any sense. However, the learned judge made it clear that it is not in every case that the question needed to be adduced in evidence, it all depends on the facts of each case. In that case the accused was charged with trafficking in 13,767.51g of cannabis. The question asked was whether he had any incriminating articles in his custody and control. The response by the accused was his act of pointing out exhibit P17 to SP4. The learned judge held that the question appeared to give evidentiary value and weight to the answer given. Without the question he held that the evidence of the act of pointing out the drugs by the accused is of little value; at the highest it shows that the accused merely had knowledge of the dangerous drugs but such knowledge in law could not constitute possession.

[27] In *Public Prosecutor v Khoo Boo Hock & Anor*, Edgar Joseph Jr J (as he then was) held that in the circumstances of the case the prosecution must prove beyond reasonable the actual questions put to the accused in order to find out precisely what information was intended to be conveyed by the accused which led to the discovery of the drugs.

[28] In the present case the question put to the appellant is contained in P51. What may be considered as objectionable is the words '... memberi pengakuan kepada saya?' appearing in the question which may literally be translated to mean '... confess to me'. The answer given by the appellant read together with the question can be construed as an admission by the appellant to the offence for which she was being charged. On that premise the question ought not in the circumstances to have been admitted as evidence as its prejudicial effect far outweigh its evidential value. Be that as it may, I agree with the prosecution that the information in itself is a complete statement without having to resort to the question. The objection raised by learned counsel cannot therefore be sustained.

[29] However, that is not the end of the matter in so far as the admissibility of the information supplied by the appellant is concerned. The only evidence adduced by the Prosecution of the information is the record of it as contained in P51. SP12 did not give any oral evidence of it. In commenting on the

manner of giving evidence of information received under s 27, Augustine Paul J (as he then was) said in *Public Prosecutor v Hashim bin Hanafi* at pp 185–186:

> Information given under s 27 is not a matter that is required by law to be in writing so as to be governed by ss 91 and 92 of the Act. Therefore the information must be proved by oral evidence pursuant to s 60(b) of the Act. Thus a written record of the information given by the accused will not by itself be substantive evidence of its contents and it is what the witness deposes in court as having been said by the accused that will be evidence (see *Bhagirath*). Where the information is contained in a police diary it can only be used for the purpose of refreshing memory (see *Public Prosecutor v Er Ah Kiat* [1966] 1 MLJ 9). Where it is contained in any other document it can, at the highest, serve only as evidence of corroboration. It is on this basis that a report prepared by a chemist pertaining to his analysis of drugs cannot be tendered as substantive evidence of its contents but only as corroboration of his oral evidence in court under s 157 of the Act (see *Saw Thean Teik v R* [1953] MLJ 124; *Muhammed bin Hassan v Public Prosecutor* [1998] 2 MLJ 273). The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible (see *DPP v Hester* [1972] 3 All ER 1056). Its role is to confirm other evidence in the sense that it renders that other evidence more probable (see *Doney v R* (1990) 171 CLR 207; *DPP v Kilbourne* [1973] AC 729). It cannot therefore amount to that other evidence itself. Thus the record of an information will only enhance the credibility of the witness and the absence of it cannot render the oral evidence of it inadmissible; nor can it be a substitute for the evidence that it is meant to corroborate.

[30] It is therefore clear that there must be oral evidence of the information given. P51 cannot be a substitute for it. Accordingly, we hold that P51, the information supplied under s 27 by the appellant, is inadmissible.

Evidence of Subsequent Conduct

[31] The inadmissibility of the information supplied by the appellant does not affect the admissibility of the evidence of her subsequent conduct under s 8 of the Evidence Act 1950 irrespective of s 27. As Chinnappa Reddy J said in *Prakash Chand v State* AIR 1979 SC 400 at p 404:

> The evidence of the circumstances, simpliciter, that an accused person led a police officer and pointed out the place where stolen articles or weapon which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under s 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously will or antecedent to such conduct falls within the purview of s 27 of the Evidence Act (vide *Himachal Pradesh Administration v Om Prakash* AIR 1972 SC 975).

[32] The evidence of conduct of the appellant in this case are as follows:

(a) bringing the police team to her house;

(b) using the key attached to the chain that she was wearing to open the cupboard;

(c) taking out a folded green blouse from the cupboard; and

(d) taking out from the blouse a folded handkerchief containing P40 and P44A–F which belonged to the deceased.

[33] SP10 said in his evidence that he had never seen the gold chain before. SP7 said that the gold chain that the deceased was wearing on the fateful morning was missing. He identified P40 and P44A–F as that of the deceased. Thus the appellant was clearly in possession of recently stolen goods. Under s 114(a) of the Evidence Act 1950 it may be presumed that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. This presumption can also be indicative of any other more aggravated crime which has been connected with the theft. As Matthew CJ said in *Abdullah bin Saad v Public Prosecutor* [1956] MLJ 92 at pp 92–93:

> Presumably, the statutory presumption was illustration (a) of section 114 of the Evidence Ordinance, which reads:
>
> The Court may presume —
>
> (a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;
>
> *Wills on Circumstantial Evidence* (7th Ed), p 104 has the following passage:
>
> The possession of stolen goods recently after the loss of them, may be indicative not merely of the offence of larceny, or of receiving with guilty knowledge, but of any other more aggravated crime which has been connected with theft. Upon an indictment for arson, proof that property which was in the house at the time it was burnt, was soon afterwards found in the possession of the prisoner, was held to raise a presumption that he was present at, and concerned in, the offence; *R v Rockman* (1789) 2 East PC p 1035, and see *R v Fuller* (1816) R & R 308. This particular fact of presumption commonly forms also a material element of evidence in cases of murder; which special application of it has often been emphatically recognised. It is upon the same principle that a sudden and otherwise inexplicable transition from a state of indigence and a consequent change of habits or a profuse or unwanted expenditure inconsistent with the position in life of the party, is sometimes a circumstance extremely unfavourable to the supposition of innocence (*R v Burdock*) (murder by poison) Bristol Assn Ap 1835, Cor: Sir Charles Wetherell, Recorder.

A But the rule must be applied with discrimination, for the bare possession of stolen property, though recent, uncorroborated by other evidence, is sometimes fallacious and dangerous as a criterion of guilt.

In the present case, the only evidence to connect the appellant with the killing is the possession of two pieces of jewellery, the property of the deceased, and it B is not certain that they were on the deceased's person on the day of his death. In our view, this did not supply sufficient evidence on which to found a conviction for murder, and we accordingly allowed the appeal and directed that the appellant should be discharged.

C

[34] In this case the deceased was wearing the gold chain at the time of her death. This is a material element to connect the appellant to the murder of the deceased. This is further supported by other evidence such as, the acid injury on the appellant's lips and arm when the deceased also had acid injuries D and the presence of the Yamaha motorcycle at the deceased's shop at about 7.05am on the material date. Thus, the evidence is sufficient to convict the appellant for the murder of the deceased. The inferences drawn from the evidence of conduct of the appellant will remain as she has not explained them pursuant to s 9 of the Evidence Act 1950. As Augustine Paul FCJ said E in the judgment of this court in *Parlan bin Dadeh v Public Prosecutor* [2008] 6 MLJ 19 at p 44:

If the explanation is accepted by the court then the inference arising from the conduct is rebutted. If it is not accepted or if the accused does not explain his conduct the inference remains unrebutted.

F

[35] Similarly the presumption arising from s 114(a) of the Evidence Act 1950 also remains as the possession of the gold chain by the appellant has not been explained by her as required.

G

DEFENCE

[36] Further we have considered the defence put up by the appellant. We agree with the observation of the Court of Appeal that the defence put up by H the appellant when tested against the totality of the evidence adduced is difficult to be believed. More importantly it failed to raise any reasonable doubt in the prosecution's case. The appellant in her evidence did not offer any explanation whatsoever as to how she came to be in possession of the deceased's jewellery. It is our finding, therefore, that both the trial court and I the Court of Appeal had rightly concluded that the circumstantial evidence before the court irresistibly points to the guilt of the appellant.

CONCLUSION

[37] For the above reasons we find that the appeal herein is devoid of any merit and must be dismissed. The conviction and sentence imposed by the High Court is hereby affirmed.

Appeal dismissed.

Reported by Ashgar Ali Ali Mohamed